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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 01 087 50135 Office: VERMONT SERVICE CENTER Date: APR 21 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an information services and information technology firm. It seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States. Parallel provisions accord preference classification for qualified immigrants who hold baccalaureate degrees and who are members of the professions. *See* § 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii).

Eligibility in this matter turns on the whether the petitioner has established that the beneficiary met the petitioner's qualifications for the position as stated in Form ETA 750 as of the petition's priority date. It is the date that the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The petition's priority date in this instance is June 15, 2000. The beneficiary's salary as stated on the labor certification is $67,500 per year.

Counsel initially submitted insufficient evidence that the beneficiary met the petitioner's qualifications for the position as stated in Form ETA 750. In a request for evidence (RFE) dated August 2, 2001, the director requested an advisory evaluation of the beneficiary's post-secondary, formal education with a detailed explanation of the material evaluated and a brief statement of the qualifications and experience of the evaluator. The RFE exacted, also, a further description of the beneficiary's duties during two (2) years of experience in the job offered or a related one.

The RFE articulated the significance of the doubt, as to educational attainment, for Citizenship and Immigration Services (CIS), formerly the Service or INS,

> [The] evaluation is necessary to determine the level and major field of educational attainment, as described in the supporting documents, in terms of equivalent education in the United States.

Counsel responded to the RFE with a letter from the employer that detailed the beneficiary's duties during his qualifying experience. Counsel represented that "since [the beneficiary] has a bachelor's degree from the U.S. it does not need to be evaluated."

The director concluded that CIS did need the advisory evaluation, as stated in the RFE, reasoning in his decision that:

> Initially, [the petitioner] submitted a numbered document from "The International University" in Baton Rouge, LA, which is "A Division of the International Open University Corporation." [CIS] is not familiar with this entity. This document purports to be a "Bachelor of Computer Hardware Engineering" degree.
>
> However, Part B or Form ETA-750 indicates the beneficiary attended this school for only one year. Also listed are his studies from 1988 to 1992 leading to a "Diploma in Industrial Elec." at a technology school in India and a diploma in "Comp. Sc. And Programming" earned in one year at a management training institute abroad.

> No transcripts were included, and it is not clear how many foreign credits were accepted by the International University, what his foreign credits equate to in terms of comparable credits at a United States University, what courses he took at The International Institute, or whether the International Institute is accredited.

The director determined that the evidence did not clearly establish that the beneficiary possesses a baccalaureate degree and denied the petition in a decision dated January 2, 2002.

The petitioner, on appeal, revealed the advisory opinion of International Education Evaluations, Inc., dated January 22, 2002 (IEE opinion). Counsel submitted a brief.

Counsel's brief treats educational equivalency in terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)*(3)*. That regulation, however, relates to criteria for specialty occupations. *See* 8 C.F.R. § 214.2(h). Moreover, 8 C.F.R., Part 214, applies to nonimmigrant petitions, not to the instant I-140. These regulations are not persuasive or applicable to the petitioner's third preference immigrant visa petition.

Counsel cites provisions of 8 C.F.R. § 204.5(l)(3)(C) that better apply to I-140 petitions. They exact proof of a baccalaureate degree from an official college or university record showing the date the degree was awarded and the area of concentration of study. In this connection, the RFE specifically targeted the level and the major field of educational attainment.

The IEE opinion based the beneficiary's level of educational attainment on his 1992 Diploma in Industrial Electronics, from India's Maharashtra State, and, in addition, concluded:

> The content of this program equates to three years of post-secondary technical credits in the United States. Further, in 1994 Mr. [redacted] received the Bachelor of Computer Hardware Engineering from The International University [in Louisiana]. It is noted that education completed in the United States does not require any validation by IEE, Inc.

Neither counsel nor IEE gives any authority for the proposition that the record of education completed in the United States requires no validation. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The transcript of the International University creates several doubts. It records a "Total" of 40 hours for courses, listed and described as Paper I-VII. It leaves "Credits" blank by each Paper course, I-VII. It even describes *viva voce* as a paper. *See* Paper V. Blanks occur by common elements of senior baccalaureate credits, i.e., "project work," "dissertation," and "seminars." The description of "Paper" courses, also, is inconsistent with course work and senior level activity in a technical field.

Matter of Ho, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

> It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

Form ETA 750, in Part A, block 14, indicated that the position of software engineer required a major field of study in computer science or engineering. International University limits the beneficiary's degree to computer hardware engineering. Counsel's contention that education completed in the United States does not require any

validation is unhelpful in satisfying the requirements of the proffered position as set forth by the petitioner on Form ETA 750.

A labor certification is an integral part of the petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See* 8 C.F.R. § 204.5(d). *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The IEE opinion, also, utterly dismisses the importance of any evaluation of the record of the educational attainment. The neglect to verify information about the university's baccalaureate record undermines the credibility of the IEE opinion. A search of the Internet does not result in any information about this university. This educational evaluation has its own disclaimer to the effect that it is an advisory opinion only and not binding on any United States institution, agency, or organization. The director did not err in rejecting it. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The beneficiary has not met all of the requirements stated by the petitioner in block 14 of Part A of Form ETA 750 as of the priority date. The petitioner has not established that the beneficiary had either a baccalaureate degree or a major field of study in computer science or engineering. Therefore, the petitioner has not overcome this portion of the director's decision.

Though it is beyond the scope of the director's decision and, consequently, not a part of this decision, CIS records reflect that the petitioner has, at least, five (5) I-140 petitions pending, in addition to the one for this beneficiary. CIS records show two (2) more Applications for Action on an Approved Application or Petition (I-824). These seven (7) create doubt concerning the petitioner's ability to pay the proffered wage. Since the petitioner did not establish that the beneficiary met all of the qualifications stated in Form ETA 750, the AAO need not protract the proceedings with the consideration of the ability to pay the proffered wage.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.